IFW

00862.023258 PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)
	: Examiner: P. M. Gurzo
Yuichi IWASAKI et al.	)
	: Group Art Unit: 2881
Application No.: 10/670,328	)
	: Confirmation No.: 5083
Filed: September 26, 2003	)
	:
For: DEFLECTOR, METHOD OF MANUFACTURING DEFLECTOR, AND CHARGED PARTICLE BEAM EXPOSURE APPARATUS	) February 25, 2005 :)

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith is a Response to Restriction and Election of Species Requirements in the above-identified application.

[X] No additional fee is required.

The fee has been calculated as shown below:

CLAIMS AS AMENDED						
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR	PRESENT EXTRA	RATE	ADDITIONAL FEE
TOTAL CLAIMS	38	MINUS	38	= 0	x $25 $50	$0.00
INDEP. CLAIMS	10	MINUS	10	= 0	x $100 $200	$0.00
Fee for Multiple Dependent claims $180/$360						—
			TOTAL ADDITIONAL FEE FOR THIS AMENDMENT			$0.00

[ ] °Verified Statement claiming small entity status is enclosed, if not filed previously.

☐ A check in the amount of $_____ is enclosed.

☐ Charge $____ to Deposit Account No. 06-1205. A duplicate of this sheet is enclosed.

☒ Any prior general authorization to charge an issue fee under 37 CFR 1.18 to Deposit Account No. 06-1205 is hereby revoked. The Commissioner is hereby authorized to charge any additional fees under 37 CFR 1.16 and 1.17 which may be required during the entire pendency of this application, or to credit any overpayment, to Deposit Account No. 06-1205. A duplicate of this paper is enclosed.

☐ A check in the amount of $_____ to cover the fee for a _____ month extension is enclosed.

☐ A check in the amount of $_____ to cover the Information Disclosure Statement fee is enclosed.

☒ Applicants' undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 530-1010. All correspondence should be directed to our address given below.

Respectfully submitted,

Attorney for Applicants
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00862.023258. PATENT APPLICATION

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RESPONSE TO RESTRICTION AND ELECTION OF SPECIES REQUIREMENTS

Sir:

Applicants respectfully traverse the restriction and election of species requirements set forth in the Office Action dated January 25, 2005.

In the Office Action, the Examiner asserts that the subject application contains three separate inventions. Specifically, Group I, claims 1-8, 14-24 and 29-32, is drawn to a deflector which deflects a charged particle beam, and is classified in class 250, subclass 396R. Group II, claims 9-12, 25-27 and 33-37, is drawn to a method of manufacturing a deflector, and is classified in class 29, subclass 458. Group III, claims 13, 28 and 38, is drawn to a charged particle beam exposure apparatus, and is classified in class 250, subclass 306.

The Examiner contends that the inventions of Groups I and II are related as process of making and product made and that the inventions of Groups I and III are related as combination and subcombination. The Examiner also contends the inventions of Groups II and III to be unrelated. Further, the Examiner contends that the inventions of Groups I, II and II have acquired a separate status in the art as shown by their different classification such that the searches are not coextensive, requiring separate examination. These contentions are respectfully traversed.

Applicants note that the inventions of Groups I-III are so closely related in the field of deflectors using particle beams, that a proper search of any of the claims would, of necessity, require a search of the others. Thus, it is submitted that all of the claims can be searched simultaneously, and that a duplicative search, with possibly inconsistent results, may occur if the restriction requirement is maintained.

Applicants further submit that any nominal burden placed upon the Examiner to search an additional subclass or two, necessary to determine the art relevant to Applicants' overall invention, is significantly outweighed by the public interest in not having to obtain and study several separate patents in order to have available all of the issued patent claims covering Applicants' invention. The alternative is to proceed with the filing of multiple applications, each consisting of generally the same disclosure, and each being subjected to essentially the same search, perhaps by different Examiners on different occasions. This places an unnecessary burden on both the Patent and Trademark Office and on Applicants.

In the interest of economy, for the Office, for the public-at-large and for Applicants, reconsideration and withdrawal of the restriction requirement are requested.

Nevertheless, in order to comply with the requirements of 37 CFR 1.143, Applicants provisionally elect, with traverse, to prosecute the invention of Group I, namely claims 1-8, 14-24 and 29-32.

Further, Applicants note that the Examiner has characterized the inventions of Groups I and II as being related as combination and subcombination. The Examiner further asserts that the combination as claimed does not require the particulars of the subcombination as claimed for patentability. Upon further review, however, Applicants note that, as currently claimed, the charged particle beam exposure apparatus recited in independent claim 13 includes those features of the deflector, which are recited in independent claim 1. Likewise, the charged particle beam exposure apparatus recited in independent claim 28 includes those features of the deflector, which are recited in independent claim 14, and the charged particle beam exposure apparatus recited in independent claim 38 recites those features of the deflector, which are recited in independent claim 29. Accordingly, Applicants submit that, although the inventions of Groups I and III are related as subcombination and combination, respectively, the combination claims, as currently presented, recite the features of the respective subcombination claims. As a result, Applicants submit that the inventions of Groups I and III should be grouped together at this time.

In view of the foregoing and inasmuch as Applicants have provisionally elected, with traverse, to prosecute the invention of Group I, Applicants request that claims 13, 28 and 38 of Group III be joined with that grouping.

The Examiner further asserts that, in the event the invention of Group I is elected, the application contains three separate species of inventions. Specifically, Species I includes claims 1-8 (and presumably claim 13) and is drawn to a deflector wherein the second conductive member is formed on a surface of the first conductive member. Species II includes claims 14-24 (and presumably claim 28) and is drawn to a deflector wherein the first and second conductive layers oppose each other in the opening. Species III includes claims 29-32 (and presumably claim 38) and is drawn to a deflector with two deflector electrodes which are at least partially buried in the two groove portions. The Examiner considers no claim to be generic at this time.

Initially, Applicants traverse the election of species requirement on the grounds that it is well settled that claims are never species. The Examiner, however, has characterized the claims as species. Applicants request, therefore, that the election of species requirement be withdrawn on this basis.

In addition, a careful review of the subject application reveals that the various embodiments are so closely related as to not require separate fields of search. Specifically, in this application, the claims of the noted species are each directed to various aspects of deflectors, which should be examined in a single application. Accordingly, for these reasons as well, neither Applicants nor the U.S. Patent and Trademark Office should be put through the trouble and expense entailed in multiple filing and prosecution. In addition, Applicants submit that the public-at-large should not be required to obtain and study several patents in order to have available all of the issued patent claims covering the invention.

Still further, the making of an election species is not mandatory in all instances where it is possible to do so. Rather, the Examiner may use his discretion and choose not to make an

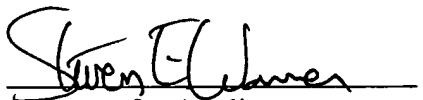
election of species where circumstances warrant. It is believed that such is the case in the subject application. Therefore, Applicants request, under 37 CFR 1.143, that the Examiner reconsider and withdraw the election requirement set forth in the above-noted Office Action.

Nevertheless, in order to comply with the requirements of 37 CFR 1.146, and MPEP § 809.02(a), Applicants also provisionally elect, with traverse, to prosecute the invention of Group I and Species III, namely claims 29-32. For the reasons set forth above, Applicants further request that claim 38 be joined in the examination of claims 29-32.

Applicants further submit that the instant application is in condition for allowance. Favorable consideration and early passage to issue are requested.

Applicants' undersigned attorney may be reached in our Washington, D.C. office by telephone at (202) 530-1010. All correspondence should continue to be directed to our below-listed address.

Respectfully submitted,



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